IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.3280 OF 2006

The State of Maharashtra ..Applicant

Vs.

Milan Vasant Mhatre ..Respondent

...

Mr.S.S.Pednekar A.P.P. for the Applicant-State
Mr.S.S.Patwardhan Advocate for Respondent

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : APRIL 9, 2007

P.C.

1. Heard learned A.P.P. for the Applicant-State and the learned advocate for the Respondent-accused.

2. On 18.4.2006, C.R.No.II-8 of 2006 was registered at Bhaynder Police Station for the offence under Sections 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to "the said Act") against the Respondent-accused. The said offence was registered on the F.I.R. of one Smt.Nirmala Savle. As the Respondent apprehended arrest, he preferred application for anticipatory bail. The

learned Sessions Judge, Thane by order dated 6.5.2006, granted the said application. Being aggrieved thereby, this application has been preferred by the applicant-State for cancellation of the said bail.

3. The learned A.P.P. has submitted that Section 18 of the said Act bars grant of anticipatory bail to a person accused of an offence under the said Act. Hence, it is submitted that anticipatory bail could not have been granted to the Respondent-accused. It is submitted that hence, the order deserves to be set aside.

4. I have perused the said order. I have also perused the F.I.R. On perusal of the same it is seen that the complainant has stated that the Respondent-accused had addressed and threatened the complainant as "Mahar". However, the F.I.R. does not mention the caste of the complainant or caste of the accused. Relying on this aspect and based on various decisions of this Court, the learned Sessions Judge has granted bail to the Respondent-accused. The learned Sessions Judge has also granted bail on the ground that the

complainant does not belong to "Mahar" caste by birth and the complainant can claim to belong to "Mahar" caste only by virtue of marriage.

5. As far as this aspect is concerned, it is well settled that caste of the person is determined on the basis of caste of his/her parents. The reason being that the caste is acquired by birth. It has been so observed by the Supreme Court in the matter of **Kumari Madhuri Patil and Another Vs. Addl. Commissioner, Tribal Development reported in AIR 1995 SC 94** and also in the decision of this Court in the matter of **Suhas Anantrao Dashrathe & Another Vs. State of Maharashtra reported in 2002(2) Bom.C.R. 211(I).** Thus, after the complainant got married, she ceases to belong to "Mahar" caste. As such, prima facie, Section 3(1)(x) of the said Act, would not be attracted.

6. Besides this aspect, I have already observed that there are no averments in the complaint regarding the caste of complainant or the accused

7. As far as grant of anticipatory bail is concerned, this Court in the case of **Ramchandra**

Govindrao Watkar and another Vs. State of Maharashtra reported in 1995(2) Mh.L.J. 669, has observed that:

." However, that does not mean that in a case where because of political rivalry or other considerations, though a case is registered under the Prevention of Atrocities Act, yet prima facie accusation made in the First Information Report does not disclose any offence punishable under the Prevention of Atrocities Act, the jurisdiction of the Court under Section 438, Criminal Procedure Code is taken away. The Court should not shirk its responsibility in examining appropriate cases where it is brought to the notice of the Court in an application under Section 438, Criminal Procedure Code that ex facie the accusation discloses no offence having been committed under the Prevention of Atrocities Act."

. This Court has further in the same para, observed as under:

. "It would be really hazardous if the allegations made in the First Information Report of accusations contained therein do not make out any offence under the Prevention of Atrocities Act, yet to harass a person the police officials register the case under the Prevention of Atrocities Act so that such person may not invoke section 438 of Cr.P.C. as Section 18 of the Prevention of Atrocities Act bars invocation of Section 438 of Cr.P.C. for grant of anticipatory bail and the court refuses to entertain such application. Section 18 bars invocation of section 438 of Cr.P.C. in relation to a case involving the arrest of any person on an accusation of having committed an offence under the Prevention of Atrocities Act and not simply because a case has been registered against such person under the said Act. Thus, whenever it is pointed out by an accused/applicant in an

> offence registered under the Prevention of Atrocities Act to the Court while moving application pre-arrest bail under Section 438 of Cr.P.C. that the accusation made in the F.I.R. or allegations contained therein do not constitute any offence under the Prevention of Atrocities Act, it is the duty of the court to examine and judicially scrutinize whether on its face, the First Information Report and the material available in the case diary do constitute an offence under the Prevention of Atrocities Act."

8. The judgment of this Court in the matter of **Manohar Martandrao Kulkarni and others Vs. State of Maharashtra; 2005(4) Mh.L.J. 588**, has considered whether the police can take cognizance of the offence when the FIR does not contain the crucial averments relating to caste. The said averments are (i) complainant belongs to a member of Scheduled Caste or Tribe and (ii) the accused did not belong to any scheduled caste or tribe. In the said judgment, it has been emphasized,

considering several other judgments that there can be no registration of crime under the Atrocities Act if the caste of the complainant and/or the accused is not contained in the body of the FIR. It is further observed that even the investigation and any further Court proceeding on the basis of such FIR cannot be maintained in law. These observations can be found in para 11 of the judgment which are as under:-

. "11. In my view, after the passing of the aforesaid two judgments, holding that there can be no registration of a crime under the Atrocities Act, or investigation as regards the said crime, if the caste of the complainant and/or the accused is not contained in the body of the FIR, all investigations and further Court proceedings on the basis of such investigations, cannot be maintained in law. Such First Information reports and Court proceedings on the basis of crimes registered on the basis of such First Information Reports will, therefore,

have to be quashed and set aside".

9. The Division Bench of this Court in the matter of **Anant Vasantlal Sambre Vs. State of Maharashtra** delivered on 20.4.2001 in Criminal Writ Petition No.49 of 2001 held that if it is not shown that accused does not belong to Scheduled Caste or Scheduled Tribe, the offence under Section 3 of the Atrocities Act cannot be registered. Para 6 of the judgment reads thus:

. "6. The report, which is filed by the petitioner belongs to Hindu Khatik Caste, which is a Scheduled Caste. However, in the report, it is nowhere mentioned that the person against whom the complaint is made viz. Shri.Kailash Gorantyal belongs to Scheduled Caste or Schedule Tribe. The opening words of Section 3 of the said Act are like this"

. 'whoever, not being a member of Scheduled Caste or Schedule Tribe...'".

10. So it is precondition that person committing

the alleged offence should not belong to any Scheduled Caste or Scheduled Tribe. In the report filed at the police station, there ought to have been some averment indicating that Shri.Kailsah Gorantyal does not belong to Scheduled Caste or Scheduled Tribe. In the absence of such averment, or any other material before the police station officer for coming to the conclusion that the accused named in the said report does not belong to scheduled caste or scheduled tribe,the offence under section 3 of the said Act cannot be registered.

11. No doubt, these judgments were dealing with the petitions for quashing of the FIR or proceedings. However, these observations will be relevant for the purposes of considering the contentions whether entertainment of the application u/s. 438 of Cr.P.C. will be barred in view of Section 18 of the said Act in asmuch as if the cognizance in the complaint on the basis of FIR which lacks in mandatory averments is shown to be illegal then obviously it has to be held that prima facie case of commission of offence under section 3(1)(x) of the said Act is not made out.

12. If material is collected in furtherance of investigation based on this defective FIR then the said investigation cannot be sustained in the eyes of law. Thus if the caste of the complainant and/or accused is not mentioned in the FIR, such FIR will lack in these crucial and necessary statements and will not be sufficient to register an offence. In this regard, the observations in the judgment in the matter of Manohar Martandrao Kulkarni and others Vs. State of Maharashtra (supra) will have direct application in this case.

13. Applying the said observations in the matter of Manohar Martandrao Kulkarni and others Vs. State of Mah. (supra) to this case, it is apparent that the complaint dated 18.4.2006 of the complainant which is treated as FIR and on the basis of which an offence under section 3(1)(x) of Atrocities Act has been registered, does not contain the caste of either the complainant or the accused. The observations in the judgment in the matter of **Manohar Martandrao Kulkarni (supra)** as well as in the judgment of the Division Bench of this Court in the matter of **Anant Vasantlal Sambre**

Vs. State of Maharashtra, will squarely apply to this case.

14. Since prima facie the FIR in this case does not disclose the necessary particulars for making out an offence under Section 3 of Atrocities Act, the offence could not have been registered and in that case the bar under section 18 of the said Act would not be attracted. In this prima facie view of the matter, since the other allegations relate to non-cognizable and bailable offences, the applicant will be entitled to invoke powers under Section 438 of Cr.P.C. The learned Judge has taken into consideration all these judgments and thereafter has granted bail to the accused. Looking to the decisions of this Court on the aspect in question, no fault can be found with the order of the learned Sessions Judge granting anticipatory bail to the respondent-accused. Hence, I do not find that this is a fit case to cancel the anticipatory bail granted to the respondent-accused.

15. Application is therefore, rejected.

[Smt. V.K.Tahilramani, J.]